

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KURT F. LUNA,

Plaintiff,

v.

FORD MOTOR COMPANY, et al.,

Defendants.

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**No. 3:06-0658
JUDGE ECHOLS**

ORDER

Pending before the Court are the Report and Recommendation (“R&R”) entered by the United States Magistrate Judge on February 28, 2008 (Docket Entry No. 148), and Plaintiff Kurt Luna’s Objections to the R&R (Docket Entry No. 149).

When a party makes timely objections to a Report and Recommendation, the Court “shall make a *de novo* determination of the matter and may conduct a new hearing, take additional evidence, recall witnesses, recommit the matter to the Magistrate Judge for further proceedings and consideration, conduct conferences with counsel for the affected parties, and receive additional arguments, either oral or written, as the District Judge may desire.” L.R.M.P. 9(b)(3).

The Magistrate Judge recommends that this Court deny Defendant Ford Motor Company’s (“Ford’s”) motion to dismiss for failure to state a claim, but grant Defendant Jenkins & Wynne, Inc.’s (“Jenkins”) similar motion to dismiss. These Defendants argued that Plaintiff Luna’s *pro se* Amended Complaint failed to satisfy Federal Rule of Civil Procedure 8(a) in that the pleading did not include a “short and plain statement” of the claim to notify Defendants fairly of the nature of Plaintiff’s legal cause of action against them. The Magistrate Judge rejected this argument as to Ford, finding that Luna’s pleading, construed liberally, states a breach of warranty claim under the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2310(d)(1), seeking damages for alleged warranty defects in the F350 pickup Plaintiff purchased. See Ward Adventures, LLC v. Buddy

Gregg Motor Homes, Inc., 2007 WL 869619 at *5 (E.D. Tenn. 2007) (to bring a breach of warranty claim under the MMWA, the plaintiff must show that (1) the goods are subject to a warranty and are nonconforming; (2) the seller was given a reasonable opportunity to cure the defects; and (3) the seller failed to repair the defects within a reasonable time or within a reasonable number of attempts). The Magistrate Judge further decided, however, that Luna fails to state a claim under the MMWA against Jenkins, the dealership that sold the pickup to Luna. Therefore, the Magistrate Judge recommends proceeding to the discovery stage of litigation only with regard to Luna's MMWA claim against Ford.

Luna objects to a dismissal of his claim against Jenkins alleging that Jenkins was a "co-conspirator" of Ford because Jenkins sold, advertised, promoted and otherwise distributed an intentionally defective product made by Ford. He alleges that Jenkins also sold or otherwise transferred his purchase credit contract to Ford Motor Credit Company, a subsidiary of Ford. Luna's remaining objections concern issues upon which the Court has already ruled in prior Orders and which the Court will not re-visit at this time.

Luna's objections concerning his claims against Ford and Jenkins are without merit. The Court agrees with the analysis of the Magistrate Judge in the R&R that Luna fails to state a claim under the MMWA against Jenkins. However, Luna states a claim against Ford. See id. Accordingly, the Court rules as follows:

(1) Plaintiff Kurt Luna's Objections To The Magistrate Report And Recommendations, D.E. #148; And To Magistrate's Order, D.E. #147 (Docket Entry No. 149) are hereby OVERRULED;

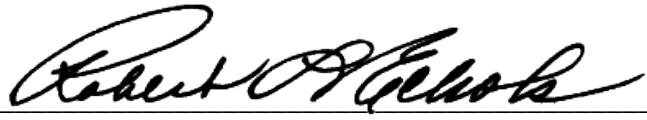
(2) the Report and Recommendation entered by the United States Magistrate Judge on February 28, 2008 (Docket Entry No. 148) is hereby ACCEPTED; and

(3) the Motions to Dismiss filed by Defendants Ford Motor Company and Jenkins & Wynne, Inc. to the original Complaint and the Amended Complaint (Docket Entry Nos. 63 & 100) are

hereby GRANTED IN PART and DENIED IN PART. The Motions are GRANTED in that Plaintiff Luna fails to state a claim against Defendant Jenkins & Wynne, Inc., and any claim against that Defendant is hereby DISMISSED WITH PREJUDICE. The Motions are DENIED with regard to the sole remaining Defendant, Ford Motor Company.

(4) This case is hereby returned to the Magistrate Judge for entry of a scheduling order and further case management on Plaintiff's claim against Ford under the MMWA.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert L. Echols", written over a horizontal line.

ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE